



# Alcohol and Tobacco Tax and Trade Bureau

**Bernard J. Kipp**

**District Director of Investigations – Northwest**

# Federal Alcohol Administration Act (1935)

- Gave Federal Gov. power to regulate :
- Who can produce or introduce alcohol into commerce
- How it must be packaged/labeled
- How it can be marketed/sold
- (Last 2 must have element of interstate commerce)

# Business Practice Regulations

**LAW-** Federal Alcohol Administration Act  
(Unfair Competition and Unlawful Practices  
proscribed by law)

**Regulations** (Amended in 1995)

Tied House – 27 CFR Part 6

Exclusive Outlet – 27 CFR Part 8

Commercial Bribery – 27 CFR Part 10

Consignment Sales – 27 CFR Part 11

# Elements required for a “federal case”

Requirement or Inducement

or

Offer of Consignment or other than  
bonafide sale

Exclusion

Interstate or foreign commerce

Similar state law for malt beverages

# TERMS

- **Industry Member**    Producer of distilled spirits, wine, malt beverages, Importer, or Wholesaler
- **Trade Buyer**    Wholesaler or Retailer of distilled spirits, wine, or malt beverages

# Changes to Parts 6,8,10, and 11 of regulations

- “Exclusion” defined by regulations
- Practices which result in Exclusion defined in Part 8
- Practices which put retailer’s independence at risk defined in Part 6
- Practices which put Trade Buyer’s independence at risk defined in part 10

# Changes Continued

- Criteria for determining retailer independence defined for Parts 6 & 8
- Criteria for determining trade buyer independence defined for Part 10
- Other than bonafide sale defined in Part 11
- Federal Tied House exceptions liberalized in Part 6

# EXCLUSION

## Tied House and Exclusive Outlet

- Exclusion in General. (a) Exclusion in whole or in part occurs:
- (1) When a practice by Industry Member places a retailer's independence at risk by means of a TIE or LINK between the Industry Member and the Retailer
- AND
- Such practice results in the retailer purchasing less than it would have of a competitor's product



# Criteria for determining Retailer Independence

- Practice restricts free economic choice of retailer to decide quantity & products to purchase
- Ind. Member obligates retailer to participate in promotion to obtain product
- Retailer has continuing obligation to purchase/promote Ind mem product

# Criteria for determining Retailer Independence

- Retailer has commitment not to terminate purchases of Ind member's products
- Practice involves the industry member in day to day operations of retailer (Control retailers decision on purchases, pricing, & display)
- Practice is discriminatory – Not offered to all retailers in local market on same terms without business reasons justification

# Exclusive Outlet

- **Application** Industry members and Retailers not wholly owned by the Industry Member
- **Jurisdictional:** Require a retailer to purchase through:
  - Coercion
  - Agreements or Contracts beyond a single sales transaction
  - Third Party Arrangements

# Exclusive Outlet

- Exclusion - Practice places a retailer's independence at risk by means of a TIE or LINK between the Ind Mem & Retailer
- AND
- Practice results in the retailer purchasing less than it would have of a competitor's product

# Exclusive Outlet

- Practices which result in exclusion
- Purchases by retailer due to threat of physical or economic harm by selling Ind Member
- Contracts requiring retailer to purchase alcohol beverages from certain Ind Mem & restrict retailer from purchasing products from another Ind Mem.

# Commercial Bribery

- **Application** Industry members and Employees, Officers & representatives of Trade Buyers
- **Jurisdictional:** To induce a Trade Buyer to purchase by:
- Offering or giving a bonus, premium, compensation or thing of value to any officer, employee or representative of Trade Buyer

# Commercial Bribery

- Exclusion Practice places a retailer's independence at risk by means of a TIE or LINK between Ind Mem & Trade Buyer

AND

- Practice results in the retailer purchasing less than it would have of a competitor's product

# Commercial Bribery

- Practices which put Trade Buyer's independence at risk:
- Industry Member payments of money to the employee(s) of a trade buyer without the knowledge of consent of the trade buyer-employer in return for the employee agreeing to order alcoholic beverages from the industry member



# Consignment Sales

- **Application** Transactions between Industry members and any Trade Buyer
- **Jurisdictional:** To sell, offer or contract to sell to any trade buyer or for such buyer to purchase, offer or contract to purchase
- On consignment
- Conditional sale or sale with privilege of return
- Reacquisition
- Other than bonafide sales (Includes slotting fee payments to retailers)

# Consignment Sales

- Reasons not constituting return for ordinary and usual commercial reasons:
- Overstocked or slow moving products
- Seasonal Products

# Consignment Sales

- Reasons constituting return for ordinary and usual commercial reasons
- Defective Product
- Error in delivery
- Product unlawful to sell
- Termination of retail business or wholesale franchise
- Change in product
- Discontinued Product
- Seasonal Dealer

# Tied House

- **Application** Industry members and Retailers not wholly owned by the Industry Member
- **Jurisdictional:** Induce a retailer to purchase by:
  - Holding interest in retail license
  - Acquiring interest in retailer's business property
  - Providing things of value (subject to exceptions)
  - Paying/crediting retailer for advertising service
  - Guaranteeing a loan of retailer
  - Excessive extension of credit
  - Quota Sales & Tie In Sales

# Tied House

- **Exclusion** Practice places a retailer's independence at risk by means of a TIE or LINK between Ind Mem & Retailer
- AND
- Practice results in the retailer purchasing less than it would have of a competitor's product

# Tied House

- Practices which put retailers independence at risk:
- Industry Member resetting other Industry Member's stock at a retailer's premises
- Industry Member purchasing/renting display, shelf, or warehouse space from retailer
- Ownership by Ind Mem of less than 100% in retailer. Used to influence purchases of retailer
- Ind Mem. requiring retailer to purchase one alcoholic product to purchase another at the same time

# Exceptions

- Practices that are exceptions to section 105 (b) (3) of the FAA Act
- (Things of Value)

# Exceptions

Product Displays

POS advertising & consumer specialties

Temporary Retailers

Equipment & Supplies

Samples

Newspaper Cuts

Combination Packing

Educational Seminars



# Exceptions

Consumer Tastings at Retailer

Consumer Promotions

Advertising Service

Stocking Rotation & Pricing

Participation in Retailer Association Activities

Merchandise

Outside Signs

# Recordkeeping Requirements

- Industry members must keep and maintain records on premises for certain items
- Product Displays
- Equipment and Supplies
- Samples
- Coupons
- Participation in Retailers Assoc. activities
- Merchandise

# Recordkeeping Requirements

- Required records for certain items furnished to retailers must be kept on premises and include:
  - Name & Address of retailer
  - Date furnished
  - Item furnished
  - Industry member's cost of item
  - Charges to retailer (if any)